

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
BellSouth Telecommunications, Inc. Request for)	
Declaratory Ruling that State Commissions May)	
Not Regulate Broadband Internet Access Services)	WC Docket No. 03-251
By Requiring BellSouth to Provide Wholesale or)	
Retail Broadband Services to CLEC UNE Voice)	
Customers)	
_____)	

**COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA),¹ through the undersigned and pursuant to Federal Communications Commission (FCC or Commission) Rules 1.415 and 1.419,² hereby submits its comments in response to the Public Notice³ and subsequent Order⁴ in the above-docketed proceeding. BellSouth filed an Emergency Request for Declaratory Ruling⁵ seeking a

¹ USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

² 47 C.F.R. §§ 1.415 and 1.419.

³ Public Notice, WC Docket No. 03-251, DA 03-3991 (rel. Dec. 16, 2003) soliciting comment on a request filed by BellSouth Telecommunications, Inc. (BellSouth) for declaratory ruling that state commissions may not regulate broadband Internet access services by requiring BellSouth to provide wholesale or retail broadband services to voice customers of competitive local exchange carriers (CLECs) using unbundled network elements (UNEs) (Public Notice).

⁴ *BellSouth Telecommunications, Inc. Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth to Provide Wholesale or Retail Broadband Services to CLEC UNE Voice Customers*, Order, WC Docket No. 03-251, DA 03-4111 (rel. Dec. 30, 2003) (Order). The Order extended the comment due date to January 30, 2004 and the reply comment due date to February 20, 2004.

⁵ *BellSouth Telecommunications, Inc. Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth to Provide Wholesale or Retail Broadband Services to CLEC UNE Voice Customers*, Emergency Request for Declaratory Ruling (filed Dec. 9, 2003).

declaratory ruling from the Commission on the authority of state commissions to regulate BellSouth's broadband Internet access services because several state commissions – namely Florida, Kentucky, Louisiana, and Georgia⁶ – are requiring BellSouth to provide either its wholesale broadband transmission or its retail broadband Internet access service over UNE loops leased by CLECs (either on a stand-alone basis or as part of the UNE platform).⁷ USTA files these comments in support of BellSouth's Emergency Request for Declaratory Ruling and agrees with the bases cited by BellSouth for the requested declaratory ruling: (1) in the Triennial Review Order,⁸ the Commission has clearly preempted state commissions from requiring incumbent local exchange carriers (ILECs) to provide broadband transmission or broadband Internet access;⁹ (2) state commissions have no authority to regulate interstate information services, which includes broadband Internet access services;¹⁰ and (3) state commissions have no authority to regulate interstate communications, which includes wholesale DSL transmission service when used for Internet access.¹¹

⁶ Notably, in an oral ruling, the Tennessee Regulatory Authority correctly decided two weeks ago that BellSouth is not required to provide its digital subscriber line (DSL) service to voice customers of CLECs. *See* "Tennessee Regulator: BellSouth Not Required to Provide DSL to CLEC End Users," TRDaily, Jan. 14, 2004. The Tennessee Regulatory Authority has not yet issued a written order on this decision.

⁷ *See* Emergency Request for Declaratory Ruling at 2.

⁸ *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) (Triennial Review Order), *petitions for mandamus and review pending*, *United States Telecom Ass'n v. FCC*, Nos. 00-1012, 00-1015, 03-1310 *et al.* (D.C. Cir.).

⁹ *See* Emergency Request for Declaratory Ruling at 10-17.

¹⁰ *See Id.* at 17-25.

¹¹ *See Id.* at 25-30.

Recently, the U.S. Department of Justice, the Federal Bureau of Investigation, and the U.S. Drug Enforcement Administration urged the Commission to reject, or at least delay action on, BellSouth's Emergency Request for Declaratory Ruling based on concerns these government entities expressed about implications of such a declaratory ruling on the ability of law enforcement agencies to conduct wiretaps for criminal investigations, pursuant to authority granted under the Communications Assistance for Law Enforcement Act (CALEA), over DSL offerings.¹² USTA contends that there is no need to reject or delay the requested declaratory ruling, noting especially that BellSouth has indicated "it would take the steps necessary to address CALEA concerns."¹³ Similarly, USTA recognizes the importance of CALEA compliance and other current public safety obligations. USTA believes that providers of voice services, whether offered over the public switched telephone network (PSTN) or over broadband facilities (even if the services are then classified as enhanced or information services), should facilitate assistance to law enforcement authorities by becoming fully CALEA compliant or otherwise deploying advanced technologies to facilitate lawful intercept of packet based voice and data communications.

For the reasons stated above, USTA urges the Commission to issue the emergency declaratory ruling requested by BellSouth.

¹² See "Federal Law Enforcement Agencies Urge FCC to Reject BellSouth's Petition on Treatment of DSL," TRDaily (Jan. 16, 2004). See generally *BellSouth Telecommunications, Inc. Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth to Provide Wholesale or Retail Broadband Services to CLEC UNE Voice Customers*, Joint Comments of the United States Department of Justice, the Federal Bureau of Investigation, and the United States Drug Enforcement Administration, WC Docket No. 03-251 (filed Jan. 15, 2004).

¹³ See *id.*

Respectfully submitted,

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January 30, 2004

CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on January 30, 2004, the aforementioned Comments of The United States Telecom Association were electronically filed with the Commission through its Electronic Comment Filing System and were electronically mailed to the following:

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